

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARK GILBERT RIMBERT,
individually, and as Personal
Representative of the Estates
of Gilbert John Rimbert and
Olivia Acosta Rimbert, deceased.,

Plaintiff,
vs.

CIVIL NO. 06-874 JH/LFG

ELI LILLY AND COMPANY,

Defendant.

SCHEDULING ORDER

THIS MATTER is before the trial Court following the Tenth Circuit Court of Appeals' ruling in Rimbert v. Eli Lilly, 09-2307, August 3, 2011. The Circuit Court affirmed the trial Court's ruling, excluding proposed testimony on Daubert grounds, *see Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), but reversed the trial Court's denial of Plaintiff's request for sixty days within which to designate a new expert witness.

While acknowledging that the trial Court has broad discretion to establish case management plans and issue scheduling orders, the Circuit noted that, at the time Plaintiff made a request to designate a new expert, no trial date was pending. Moreover, the denial of a request to designate a new expert would, of necessity, result in Plaintiff's inability to successfully prosecute his claim. Finally, the Circuit Court noted that Defendant would not be prejudiced, as it, too, could designate experts and conduct discovery on the new expert's report.

The Circuit is remanding this case to the District Court for action consistent with its opinion.

Accordingly, this Court is required to issue a new scheduling order, and now grants Plaintiff's request to allow him sixty days within which to designate a new expert and to produce a new Fed. R. Civ. P. 26 expert report. The new case management deadlines are as follows:

Plaintiff's designation of experts and production of expert reports	October 28, 2011
Defendant's designation of experts and production of expert reports	November 28, 2011
Discovery deadline	December 27, 2011
Discovery motion filing deadline	January 17, 2012
Non-discovery motion filing deadline	January 27, 2012
Pretrial Order: Plaintiff to Defendant	March 13, 2012
Consolidated Order from Defendant to the Court	March 27, 2012

IT IS SO ORDERED.

Lorenzo F. Garcia
Lorenzo F. Garcia
United States Magistrate Judge